

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KENNETH M. BOSTICK  
43 Country Road 320  
Newville, AL 36353

Registered Nurse License No. 736479

Respondent.

Case No. 2013-11

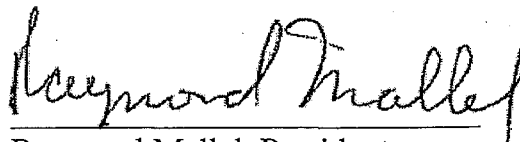
OAH No. 2012100866

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on June 7, 2013.

IT IS SO ORDERED this 10th day of May, 2013.



Raymond Mallel, President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

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**PROPOSED DECISION**

This matter was heard by Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on March 6, 2012.

Helene E. Swanson, Deputy Attorney General, represented Louise R. Bailey, M.Ed., R.N. (Complainant).

Kenneth M. Bostick (Respondent) represented himself.

Complainant seeks to discipline Respondent's license on the basis of Respondent's criminal conviction and the conduct underlying the conviction. Respondent does not dispute the conviction or the underlying circumstances, but presented evidence in mitigation and rehabilitation in support of continued licensure.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Complainant filed the Accusation in her official capacity as Interim Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs, State of California.

2. On September 11, 2008, the Board issued Registered Nurse License number 736479 to Respondent. The license, which has not been previously disciplined, expired on June 30, 2012, and has not been renewed.

3. On February 8, 2012, in the Superior Court, County of Los Angeles, State of California, in case number BA388441, Respondent was convicted, on his plea of no contest, of violating Penal Code section 311.11, subdivision (a) (possession of matter depicting minor engaging in sexual conduct), a felony. The court suspended imposition of sentence and placed Respondent on formal probation for three years on terms and conditions that included payment of \$870 in fines and fees and registration as a sex offender pursuant to Penal Code section 290. The court permitted out-of-state supervision if both probation departments agreed.

4. The facts and circumstances surrounding the conviction are that Respondent obtained and possessed material depicting minors engaging in sexual acts. In July 2010, Respondent's name and address came to the attention of a law enforcement task force that included the United States Postal Inspection Service (USPIS) after he wired \$500 to an agent of a Russian company suspected of selling child pornography to United States residents. USPIS agents thereafter set up an undercover operation through which Respondent, as well as others who had made similar payments to the Russian company, was sent an order form through which he could obtain sexually explicit videos. Respondent replied to the initial solicitation, requesting videos involving "pre-teen girls." After an exchange of emails discussing content and pricing, Respondent ordered four videos "involving penetration." Respondent ordered the videos from a catalog that described their contents as involving the performance of sexual acts, including intercourse, by children purported to be aged nine to thirteen. The videos, which contained sexually explicit material involving children, were delivered to Respondent's Lakewood, California, home on November 1, 2010. On November 2, 2010, task force agents arrested Respondent and confiscated the videos.

5. The conviction is substantially related to the qualifications, functions, and duties of a nurse by reason of California Code of Regulations (CCR), title 16, section 1444, in that the conviction, to a substantial degree, evidences the present and potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. The material in Respondent's possession involved the sexual exploitation of children which is inconsistent with the caring and healing duties and responsibilities of a nurse. Moreover, the conviction requires registration pursuant to Penal Code section 290, and is, therefore, substantially related to the qualifications, functions, and duties of a registered nurse pursuant to California Code of Regulations, title 16, section 1444, subdivision (d).

6. Respondent is complying with the terms and conditions of probation. He is being supervised by authorities in his native Alabama.

7. Respondent expressed remorse about his conduct, which he acknowledges was wrong. He was raised in a small rural town by parents who taught him proper behavior. He was active in his church growing up. Respondent moved to California in 2008, and turned to watching sexually explicit materials in part because he was living alone in Southern California.

8. Respondent is taking steps to deal with what he described as "his addiction." After his return to Alabama, Respondent has been participating in the church-affiliated "Celebrate Recovery Program." It is a faith-based 12-step program in which participants receive counseling and participate in support groups to share the challenges of their particular addiction with others. He has set up filters in his computer to block access to websites that contain sexually explicit materials.

9. Respondent has not worked in nursing since his arrest, and has not renewed his license pending the outcome of this proceeding. He is living with his grandmother, and is performing various manual labor tasks for his family to earn his keep. He is also taking online classes to obtain a Master's Degree.

10. The Board has incurred costs of \$4,467.50 in the form of Attorney General charges in connection with its investigation and enforcement of this matter, which, absent objection or contrary evidence, are deemed to be reasonable.

### LEGAL CONCLUSIONS

1. The Board has jurisdiction to discipline Respondent's license despite its expiration. (Bus. & Prof. Code, § 118, subd. (b).)

2. Grounds exist to suspend or revoke Respondent's license pursuant to Business and Professions Code sections 490 and 2761, subdivision (f), and CCR, title 16, section 1444, in that he suffered a conviction substantially related to the qualifications, functions and duties of a registered nurse, by reason of factual finding numbers 3, 4, and 5.

3. Grounds exist to suspend or revoke Respondent's license pursuant to Business and Professions Code section 2761, subdivision (a), and CCR, title 16, section 1444, in that he engaged in unprofessional conduct, by reason of factual finding numbers 4 and 5.

4. Cause exists, pursuant to Business and Professions Code section 125.3, to order Respondent to pay the Board's costs of investigation and enforcement in this matter, by reason of factual finding number 10 and legal conclusion numbers 2 and 3.

In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost regulation similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost provision did not deter individuals from exercising their right to a hearing. Thus, an agency must not assess the full costs where it would unfairly penalize the respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the

severity of the penalty; the agency must consider a respondent's subjective good faith belief in the merits of his or her position and whether the respondent has raised a colorable challenge; the agency must consider a respondent's ability to pay; and the agency may not assess disproportionately large investigation and prosecution costs when it has conducted a disproportionately large investigation to prove that a respondent engaged in relatively innocuous misconduct. (*Zuckerman v. State Board of Chiropractic Examiners, supra* at p. 45).

In this case, Respondent is unemployed and has not worked as a nurse since late 2012, and is, therefore, presently unable to pay the Board's costs of investigation and enforcement.

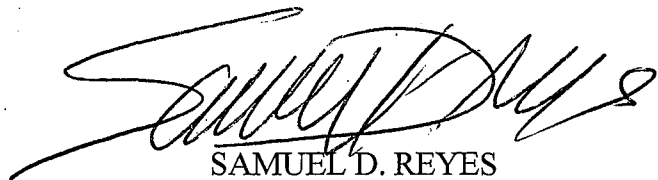
5. All evidence submitted in mitigation and rehabilitation has been considered. Respondent has accepted responsibility for his actions, and is taking steps to prevent their recurrence. However, this evidence is insufficient to establish sufficient rehabilitation to warrant continued licensure. The conviction is recent and serious, and Respondent remains on probation. Except for his participation in the Celebrate Recovery Program, there is no evidence that Respondent has undergone any psychotherapy. There is no evidence that he has undergone psychological evaluation or that he fully understands the reason(s) he was attracted to sexually explicit materials involving children. Accordingly, the order that follows is necessary for the protection of the public.

#### ORDER

1. Registered Nurse License number 736479 issued to Respondent Kenneth Matthew Bostick is revoked.

2. Respondent Kenneth Matthew Bostick is ordered to reimburse the Board's costs of investigation and enforcement, in the sum of \$4,467.50, which obligation is suspended until Respondent is able to pay the costs on a mutually agreeable reimbursement schedule.

DATED: 3/5/13

  
SAMUEL D. REYES  
Administrative Law Judge  
Office of Administrative Hearings

# Exhibit A

Accusation Case No. 2013-11

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 HELENE E. SWANSON  
Deputy Attorney General  
4 State Bar No. 130426  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 620-3005  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2013-11

11 **KENNETH MATTHEW BOSTICK**  
12 **43 Country Road #320**  
13 **Newville, AL 36353**

**A C C U S A T I O N**

14 **Registered Nurse License No. 736479**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department  
20 of Consumer Affairs.

21 2. On or about September 11, 2008, the Board of Registered Nursing issued Registered  
22 Nurse License Number 736479 to Kenneth Matthew Bostick (Respondent). The Registered  
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on June 30, 2012, unless renewed.

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1 circumstances underlying this conviction are that:

2 b. On or about April, 2010, the United States Postal Inspection Service (USPIS) entered  
3 into a joint operation with the Boston office of the Department of Homeland Security/  
4 Immigration and Customs Enforcement (DHS). DHS had previously investigated a commercial  
5 child pornography website known as "CB Company", which advertised and offered for sale  
6 hardcore child pornography (rape, torture and other masochistic sexual activity) in still images,  
7 VHS or DVD videos. DHS's undercover operation (Operation Drop Kick) identified U.S. citizens  
8 who sent money via Western Union to couriers in Russia who are affiliated with known child  
9 pornography websites. This investigation revealed that, on or about July 3, 2010, Respondent  
10 wired \$500.00 via Western Union to E.E., a known money courier for CB Company, in Perm,  
11 Russia.

12 c. On or about October 4, 2010, USPIS Inspector M.C., in an undercover capacity, sent  
13 a solicitation letter via U.S. mail address to Respondent at his address that he used to wire money  
14 via Western Union to E.E. The solicitation invited Respondent to become a customer of a mail  
15 order video service that offered sexually-related videos, and listed catalogues which he could  
16 request, including but not limited to: pre-teen boys and girls, rape, young teen boys and girls, and  
17 pedophilia. On or about October 13, 2010, Inspector M.C. received two email messages from  
18 Respondent, requesting a "sample of PRE-TEEN GIRLS", and Respondent continued to contact  
19 Inspector M.C., who used the alias "Joe Coss" and the undercover email account  
20 lsf\_vids@yahoo.com. A catalog was sent to Respondent by Inspector M.C.

21 d. On or about October 18, 2010, Inspector M.C. received an envelope from  
22 Respondent, which contained the orange piece of paper consistent with the initial solicitation sent  
23 on October 4, 2010 to Respondent, on which Respondent had handwritten in the "special  
24 requests" section: "I want pre-teen 'incest is best' and three others with 'Penatration' [sic]".  
25 Respondent also included one-half of a money order for the total price of the order which he  
26 placed. The catalogue sent to Respondent describes the "Incest is Best" video as depicting a 13-  
27 year-old daughter watching her mother engaging in oral copulation with her father, and then the  
28 daughter joins in and learns how to orally copulate her father, and then it is her turn to engage in

1 sexual intercourse with her father after her mother demonstrates how. The three other videos  
2 called "Sports Exam", "Boyfriend Fun" and "Touchdown" were also described in the catalogue.  
3 "Sports Exam" was described as a nine-year-old girl and 12-year-old girl who have a doctor  
4 examine them so that they can play sports. They remove their clothes and the doctor has them lay  
5 naked on the exam table, one at a time. He fingers the first girl's vagina while she engages in oral  
6 copulation with him, and does the same with the second girl except he also has intercourse with  
7 her." The "Boyfriend Fun" video is described as involving a 12-year-old girl, whose mother  
8 shows her how to engage in oral sex and then the boyfriend has intercourse with both of them.  
9 The "Touchdown" video is described as involving 12 and 13-year-old girls, who make out with  
10 two boys of the same age. They remove their clothes, the girls orally copulate the boys, and then  
11 the boys decide to have sexual intercourse with the girls.

12 e. On or about November 1, 2010, USPIC Inspector A.D.H. prepared and sent four  
13 compact discs with child pornography on them to Respondent, with labels on the covers stating  
14 "Incest is Best", "Sports Exam", "Boyfriend Fun" and "Touchdown". On or about November 2,  
15 2010, Respondent did knowingly and unlawfully possess and control child pornography located  
16 on four disks, the production of which involved the user of person(s) under the age of 18 years,  
17 and Respondent knowing that the matter depicted person(s) under the age of 18 years, personally  
18 engaging in and simulating sexual conduct as defined in Penal Code section 311.4(d). On or  
19 about November 3, 2010, pursuant to a federal search warrant issued by the Central District of  
20 California court the day before, special agents from the DHS and FBI executed the search warrant  
21 at Respondent's residence, and found and seized the four child pornography CD-ROMs hidden  
22 under a pile of clothing in the hallway of the residence, among other evidence.

## 23 **SECOND CAUSE FOR DISCIPLINE**

### 24 **(Unprofessional Conduct)**

25 12. Respondent is subject to disciplinary action under Section 2761, subdivision (a), in  
26 conjunction with California Code of Regulations, title 16, section 1444, subdivision (d), in that  
27 Respondent committed acts of unprofessional conduct. Complainant refers to and by this  
28 reference incorporates the allegations set forth above in Paragraph 11, subparagraphs (a) and (b),

1 inclusive, as though set forth fully.

2 **PRAYER**

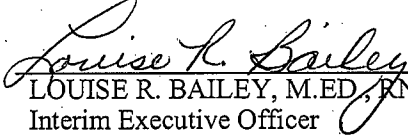
3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
4 and that following the hearing, the Board of Registered Nursing issue a decision:

5 1. Revoking or suspending Registered Nurse License Number 736479, issued to  
6 Kenneth Matthew Bostick;

7 2. Ordering Kenneth Matthew Bostick to pay the Board of Registered Nursing the  
8 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
9 Professions Code section 125.3; and

10 3. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: July 3, 2012

  
LOUISE R. BAILEY, M.ED., RN  
Interim Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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